

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION**

In re:)	
)	Chapter 11
TAJAY RESTAURANTS, INC, <i>et al.</i>,)	
)	Case No. 19-70067-TMD
Debtors.)	
)	(Jointly Administered)
)	

**MOTION FOR ORDER DIRECTING IMMEDIATE PAYMENT OF ALLOWED
ADMINISTRATIVE EXPENSE OF 4424 BUFFALO GAP ROAD OWNER, LLC**

4424 Buffalo Gap Road Owner, LLC (the “Landlord”), through its undersigned counsel, hereby moves for the entry of an order, substantially in the form of the proposed order attached hereto (the “Proposed Order”) directing Debtor Tajay Restaurants, Inc. (“Tajay”) to pay Landlord’s previously allowed administrative expense claim within seven (7) days from entry. In support of this motion (the “Motion”), the Landlord respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief sought are sections §§ 105 and 503 of title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

4. On April 7, 2020, the Landlord filed a motion seeking the allowance of its administrative expense of Tajay’s bankruptcy case [ECF No. 354] (the “Allowance Motion”).¹

¹ The Landlord did not request an order directing the immediate payment of its administrative expense at that time as the Court had not yet set an administrative claims bar date.

The Court entered an order granting in part the Allowance Motion [ECF No. 414], after a hearing held June 1, 2020,

5. After the Allowance Motion was filed, the Debtors requested [ECF No. 362] and obtained [ECF No. 371] an administrative claims bar-date in these chapter 11 cases. The administrative claims bar date was May 29, 2020. The Landlord was the only party to seek allowance of an administrative expense with respect to Tajay. The Debtors have resolved all timely-filed requests for administrative expenses, with the exception of the administrative expense asserted by JLou Properties, LLC against Debtor Yummy Holdings.

6. According to the monthly operating reports filed by the Debtors and orders allowing administrative expenses, each Debtor other than Yummy Seafoods, LLC, is clearly administratively solvent. The following chart summarizes the cash and administrative claims allowed or outstanding against each of the Debtors:²

Debtor	Cash on 7/1/2020	Pending and Allowed Administrative Claims
Tajay Restaurants, Inc.	\$98,990	<ul style="list-style-type: none">• \$25,800—Allowed [ECF Nos. 354, 414]
Yummy Seafoods, LLC	\$156,438	<ul style="list-style-type: none">• \$1,000,000—Pending [ECF No. 396]• \$10,480—Allowed [ECF Nos. 401, 446]
Yummy Holdings, LLC	\$41,170	<ul style="list-style-type: none">• \$10,915—Allowed [ECF Nos. 390, 435]• \$3,110—Allowed [ECF Nos. 391, 436]• \$23,005—Allowed [ECF Nos. 392, 410]

7. On at least eight occasions from June 11 to July 21, 2020, the Landlord, through counsel, contacted Tajay to determine when it anticipated paying the Landlord's administrative expense. Tajay refused to respond, even to tell the Landlord that it could not provide an answer.

² All secured claims in the Debtors' chapter 11 cases were to be satisfied pursuant to the Sale Order [ECF No. 317]. *See Id.* at para 22. Additionally, Harney Partners has requested the allowance of certain professional fees [ECF No. 455] that are less than that amount of such professional's retainer.

Further, the pending administrative expense request of JLou, has been continued to September 22, 2020. In light this, the Landlord seeks relief from the Court.

RELIEF REQUESTED

8. The Landlord requests that the Court enter the Proposed Order, directing Tajay to pay the Landlord's administrative expense allowed pursuant to the Expense Order within seven (7) days from entry of the order, and grant such other relief to which the Landlord may be entitled.

BASIS FOR RELIEF

9. Although the timing of the payment of administrative expenses is within the discretion of the Court, compelling a immediate payment of administrative expense claims is appropriate prior to confirmation where there is no indication that the Debtor may be administratively insolvent. *See In re Four Star Pizza, Inc.*, 135 B.R. 498, 500 (Bankr. W.D. Pa. 1992); *cf.*, *e.g.*, *In re Korea Chosun Daily Times*, 337 B.R. 773, 785 (Bankr. E.D.N.Y. 2005) (holding administrative claimant entitled to immediate payment in totally solvent debtor); *Omni Partners, L.P. v. Pudgie's Dev., Inc. (In re Pudgie's Dev., Inc.)*, 239 B.R. 688, 693 (S.D.N.Y. 1999) (stating same in dicta). Courts in this District have identified three other factors that should be considered in exercising this discretion: "(1) the prejudice to the Debtors, (2) hardship to the claimant, and (3) potential detriment to other creditors." *In re UTEX Communs. Corp.*, 457 B.R. 549, 569 (Bankr. W.D. Tex. 2011).³

10. Tajay is administratively solvent, its assets have been liquidated, and the Landlord is and will be the only non-professional administrative claimant. Payment of the Landlord's

³ Additional factors courts in other districts have considered include (1) the status of the case, (2) the ability of the debtor to pay present claims, (3) the particular needs of the administrative claimants. 4 COLLIER ON BANKRUPTCY P 503.03 (16th 2020). The Landlord submits that these considerations are functionally incorporated in the factors listed by *In re UTEX Communs. Corp.*

administrative expense will not prejudice to Tajay or any of its creditors. The only effect of further delay will be to prejudice the Landlord.

CONCLUSION

WHEREFORE the Landlord respectfully requests that the Court enter an order substantially in the form of the Proposed Order directing Tajay to pay Landlord's previously allowed administrative expense claim within seven (7) days from entry.

Dated: July 28, 2020.

Respectfully submitted,

BARRON & NEWBURGER, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2020, I caused a true and correct copy of this Motion to be served on (i) all parties registered to receive ECF notification in the above captioned case and (ii) by first class U.S.P.S. mail or email on the parties on attached Master Service List.

/s/R. J. Shannon
R. J. Shannon

SERVICE LIST

Debtors:

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Richardson, TX 75082

Yummy Seafoods, LLC
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Yummy Holdings, LLC
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20 Largest Unsecured Creditors – Tajay:

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McAfee & Taft
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Center Point Energy
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Orkin, Inc.
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Cincinnati, OH 45263-8898

Green Life Landscaping and General Services
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McLane Food Service, Inc.
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Janda Land Holdings, LLC
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August, August and Lane of Rochester LLC
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Pittsford, NY 14534

Seven Cousins of Rochester LLC
c/o Andrew August
Park Avenue Bike Shop
72 Canfield Rd.
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